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46 CFR Ch. IV (10–1–11 Edition)

§ 531.2 Scope and applicability.

Only individual NVOCCs compliant with the requirements of section 19 of the Act (46 U.S.C. 40901–40904) and the Commission's regulations at 46 CFR part 515 may enter into an NSA with one or more NSA shippers subject to the requirements of these rules. Any NVOCC who has failed to maintain its bond or license or had its tariff suspended or cancelled by the Commission is ineligible to offer and file NSAs.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50724, Oct. 1, 2009]

§ 531.3 Definitions.

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998;

(b) *Affiliate* means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers.

(c) *Amendment* means any change to a filed NSA which has prospective effect and which is mutually agreed upon by all parties to the NSA.

(d) *Authorized person* means an NVOCC or duly appointed agent who is authorized to file NSAs on behalf of the NVOCC and to publish the corresponding statement of essential terms and is registered by the Commission to file under § 531.5 and Appendix A to this part.

(e) *BTA* means the Commission's Bureau of Trade Analysis, or its successor bureau.

(f) *BCL* means the Commission's Bureau of Certification and Licensing, or its successor bureau.

(g) *Cancellation* means an event which is unanticipated by the NSA, in liquidated damages or otherwise, and is due to the failure of the NSA shipper to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the NVOCC.

(h) *Commission* or *FMC* means the Federal Maritime Commission.

(i) *Common carrier* means a person holding itself out to the general public

to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to those commodities.

(j) *Correction* means any change to a filed NSA that has retroactive effect.

(k) *Effective date* means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the NSA. An NSA or amendment becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date. The effective date cannot be prior to the filing date of the NSA or amendment with the Commission.

(l) *Expiration date* means the last day after which the entire NSA is no longer in effect.

(m) *File* or *filing* (of NSAs or amendments thereto) means the use of the Commission's electronic filing system for receipt of an NSA or an amendment thereto by the Commission, consistent with the method set forth in Appendix A of this part, and the recording of its receipt by the Commission.

(n) *OIT* means the Commission's Office of Information Technology, or its successor office.

(o) *NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person

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to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NSA.

(p) *NVOCC Service Arrangement* ("NSA") means a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party.

(q) *Statement of essential terms* means a concise statement of the essential terms of an NSA required to be published under this part.

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 56580, Sept. 28, 2005; 74 FR 50724, Oct. 1, 2009]

§ 531.4 Confidentiality.

(a) All NSAs and amendments to NSAs filed with the Commission shall, to the fullest extent permitted by law, be held in confidence by the Commission.

(b) Nothing contained in this part shall preclude the Commission from providing certain information from or access to NSAs to another agency of the Federal government of the United States.

(c) Parties to a filed NSA may agree to disclose information contained in it. Breach of any confidentiality agreement contained in an NSA by either party will not, on its own, be considered a violation of these rules.

§ 531.5 Duty to file.

(a) The duty under this part to file NSAs, amendments and notices, and to publish statements of essential terms, shall be upon the NVOCC acting as carrier party to the NSA.

(b) The Commission shall not order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier

or its agent and the amount set forth in an NSA by that common carrier for the transportation service provided.

(c) Filing may be accomplished by any duly agreed-upon agent, as the parties to the NSA may designate, and subject to conditions as the parties may agree.

(d) *Registration*—(1) *Application*. Authority to file or delegate the authority to file must be requested by a responsible official of the NVOCC in writing by submitting to BTA, either by mail to 800 N. Capitol Street, NW., Washington, DC 20573, or by facsimile to (202) 523-5867, a completed NSA Registration Form (FMC-78)(Exhibit 1 to this part).

(2) *Approved registrations*. OIT shall provide approved Registrants a log-on ID and password for filing and amending NSAs and notify Registrants of such approval.

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 56580, Sept. 28, 2005; 76 FR 11680, Mar. 3, 2011]

Subpart B—Filing Requirements

§ 531.6 NVOCC Service Arrangements.

(a) Authorized persons shall file with BTA, in the manner set forth in Appendix A of this part, a true and complete copy of every NSA or amendment before any cargo moves pursuant to that NSA or amendment.

(b) Every NSA filed with the Commission shall include the complete terms of the NSA including, but not limited to, the following:

(1) The origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) The destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(3) The commodity or commodities involved;

(4) The minimum volume or portion;

(5) The service commitments;

(6) The line-haul rate;

(7) Liquidated damages for non-performance (if any);

(8) Duration, including the

(i) Effective date; and

(ii) Expiration date;